IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

S.B. Civil Second Appeal No.378/2007

Ladulal & Anr. Vs. Smt. Munni Devi

Date of Judgment :: 25th July, 2007

Hon'ble Dr. Vineet Kothari, J.

Mr.Shiv Charan Gupta for the appellants.
Mr.Nitin Jain for the respondent.

1. This second appeal arises out of the concurrent judgments of the two courts below in a rent eviction case. Learned trial Court allowed the plaintiff's suit for eviction of the suit shop situated at Village Niwai on the ground of personal bonafide necessity of the plaintiff-landlord, Smt. Munni Devi.

2. The trial Court while deciding issue Nos.3,4,5 and 6 relating to personal bonafide necessity, comparative hardship and partial eviction held in favour of the plaintiff after recording the evidence of both the sides and discussing the case laws as many as 12 of them including the various judgments of the

Hon'ble Supreme Court held in a judgment running into 24 pages that the plaintiff's husband has no other alternative shop to carry on his business whereas the defendant had as many as five shops out of which two shops allotted in his favour in 1986 were sub-let by him and since the shop owned and possessed by the plaintiff was only of 6-7 feet of width whereas the disputed shop was of a width of 10 feet and was in three portions. Therefore, these issues were decided in favour of the plaintiff and the suit was decreed. The first appeal filed by the defendant-tenant also failed and the same was dismissed by the learned Additional District Judge (Fast Track), No.4, Tonk on 18.4.2007. The said appellate order also runs into 15 pages and has been delivered after discussing the entire facts, evidence and case laws.

3. While arguing the present second appeal, Mr. Shiv Charan Gupta, learned counsel for the appellants relied upon a judgment of the Hon'ble Supreme Court in Deena Nath Vs. Pooran Lal **(AIR 2001 SC 2655)** and submitted that the learned appellate court had wrongly noted in para 13 that the shop owned and possessed by the plaintiff was only 6-7 feet of width

whereas the suit shop was 10 feet of width as according to the plaintiff's own evidence, the plaintiff's shop was 8 feet of width. He further submitted that shop Nos.11 and 12 were not sub-let by the defendant to other persons and in fact these two shops were alloted by the Panchayat Samiti directly to these persons, namely, Rameshchand and Kunjbihari. He has also filed an application under Order 47 Rule 27 C.P.C. purporting to bring on record the notices issued by the Panchayat Samiti in the year 1999 to these persons in respect of these shops. He, therefore, submitted that both the courts below wrongly ordered eviction of the tenant and the appellants deserve to be given protection by this Court.

4. As against this, Mr. Nitin Jain, learned counsel appearing for the respondent, submitted that in a recent judgment of the Hon'ble Supreme Court in **Gurdev Kaur & Ors. Vs. Kaki & Ors. (AIR 2006 SCW 2404)**, the Hon'ble Supreme Court after discussing the entire spectrum of case law of Section 100 C.P.C. regarding maintainability of the second appeal, discussing the case law prior to amendment of Section 100 C.P.C. in the year 1976 and discussing as many as 24 judgments

right from 1889 Privy Council to AIR 2006 SC 1144, has strongly deprecated the practice of interfering in concurrent findings of two courts below by the High Courts even after amendment of Section 100 C.P.C. in 1976. The said case pertained to validity of a Will under the Indian Succession Act, 1925. Paras 80 & 81 of the said judgment of the Hon'ble Supreme Court are quoted below for ready reference:-

> "80. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case the High Court interfered with the pure findings of fact even after the amendment of Section 100 C.P.C. in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 C.P.C. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.
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> 81. In view of the clear legislative mandate crystallized by a series of judgments of the Privy Council and this Court ranging from 1890 to 2006, the High Court in law could not have interfered with pure findings of facts arrived at by the courts below. Consequently, the impugned judgment is set aside and this appeal is allowed with costs."

5. When confronted with the said recent ruling of the

Hon'ble Apex Court and observations that this Court could not interfere in the findings of facts of two courts below concurrently about the bonafide necessity of the plaintiff-respondent and the same, therefore, could not be interfered in second appeal under Section 100 C.P.C., Mr. Shiv Charan Gupta, learned counsel for the appellants, raised his voice and said that the aforesaid judgment of Hon'ble Supreme Court in Deena Nath Vs. Pooran Lal (supra) has not been noticed and distinguished in the latest ruling of Supreme Court reported in Gurdev Kaur Vs. Kaki (supra) and therefore, later ruling could not be applied in the present case. This was wholly uncalled for and unjustified on the part of counsel for the appellants. Such raising of voice by a counsel in his fifties who has been Ex-Judicial Officer of the Judiciary of Rajasthan and trying to browbeat a Judge can only be termed as most unfortunate and deserves to be deprecated.

6. A bare perusal of the facts of the case relied upon by learned counsel for the appellants as noticed in paras 3 and 4 of the said judgment, which are quoted below would show that the facts of the said case are clearly distinguishable from the facts of the present case:-

> "3. The suit premises is one of the five shop rooms on the ground floor of the building owned by the plaintiff. It was the case of the plaintiff that he needs the shop room in occupation of the defendant for the purpose of opening a new shop for his son Pradeep Kumar Gupta.
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> 4. The defendant refuted both the grounds taken in support of the plea for his eviction. He denied that he was in arrear of rent and also that the landlord had any bonafide need for the premises. The defendant further pleaded that one other shop room which was previously let out to Krishnabai and Krishna Gopal was lying vacant long prior to the filing of the suit on 4.1.1988 and that during pendency of the suit another shop room which was in occupation of one Kailash Jatav had been vacated. It was also the case of the defendant that Pradeep Kumar Gupta for whose benefit his (defendant) eviction was sought had been allotted shop room No.31 in Ravi Shankar Market in Hoshangabad. In these circumstances, the defendant contended, there was no bonafide need of the landlord for the suit premises. It was the further case of the defendant that indeed the landlord wanted to enhance the rent from Rs.225/- p.m. to Rs.400/- p.m. which he (defendant) did not agree to pay. Hence, the suit for eviction."

7. In that case, the plaintiff prayed for eviction of one suit shop out of five shop rooms on the ground floor of the building owned by the plaintiff for the needs of business by his son in the face of one other shop previously let out to other tenant was already lying vacant were the facts and the High Court held that requirement of landlord was not bonafide.

Therefore, Hon'ble Supreme Court dismissing the appeal of the landlord upheld such interference in Section 100 C.P.C. In the present case, the facts are absolutely different. Here the bonafide need for the business of husband and son of the plaintiff, Smt. Munni Devi, has been upheld by the two courts below on the ground that the shop owned and possessed by her was in a different area on Patel Road having a width of only 6-7 feet or may be 8 feet whereas the suit shop was with a width of 10 feet and also that the defendant had five other shops in the same town. These findings of facts are not liable to be interfered with in Section 100 C.P.C., in the considered opinion of this Court. No re-appreciation of evidence is permissible in Second Appeal under Section 100 C.P.C. No substantial question of law arises in the matter. The latest ruling of Apex Court in Gurdev Kaur (supra) fully applied to the present case.

8. Therefore, the present second appeal is found to be absolutely devoid of any merit whatsoever and the same is, accordingly, dismissed with no order as to costs.

[**Dr. Vineet Kothari**],**J.**

S.S.
Jr.P.A.